UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.2/1994/8
28 March 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Contemporary Forms
of Slavery
Nineteenth session
25 April - 4 May 1994
Item 4 (d) of the provisional agenda

REVIEW OF DEVELOPMENTS IN OTHER FIELDS OF CONTEMPORARY FORMS OF SLAVERY: EXPLOITATION AND TRAFFIC IN ALL ITS FORMS AFFECTING CHILDREN, INCLUDING THE PHENOMENON OF CHILD SOLDIERS, ILLEGAL TRAFFIC FOR THE PURPOSES OF ADOPTION AND ORGAN TRANSPLANTS

Report of the Secretary-General prepared pursuant to Sub-Commission resolution 1993/5

CONTENTS

		Page
Introduction		2
I.	GOVERNMENTS	3
	A. Ethiopia	3
	B. Libyan Arab Jamahiriya	3
	C. United Kingdom of Great Britain and Northern Ireland	4
II.	UNITED NATIONS ORGANS AND BODIES	6
	United Nations Office at Vienna	6
III.	INTERGOVERNMENTAL ORGANIZATION	7
	International Criminal Police Organization	7

GE.94-12400 (E)

Introduction

In its resolution 1993/5, paragraph 8, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General, as a matter of urgency, to invite again all Governments, United Nations bodies, including the United Nations Children's Fund, the specialized agencies, in particular the World Health Organization, the International Criminal Police Organization (INTERPOL) and all relevant non-governmental organizations, to pursue in-depth investigations of allegations involving the removal of organs from children and to indicate the measures taken, if any, to counteract this practice wherever it exists, with a view to presenting a report to the Working Group at its nineteenth session.

Consequently, the Secretary-General sent, on 25 October 1993, notes verbales and letters to the above-mentioned Governments, United Nations bodies and organizations. The replies are contained in the present document.

1. Governments

ETHIOPIA

[Original: English]
[23 December 1993]

The Transitional Government of Ethiopia stated that so far no cases involving the removal of organs from children had been reported to the Ministry of Labour and Social Affairs. National legislation is in force to counteract such cases, if necessary.

LIBYAN ARAB JAMAHIRIYA

[Original: Arabic]
[29 November 1993]

The General People's Congress has promulgated Act No. 4/82, concerning the permissibility of the dissection of corpses and the transplantation of organs from deceased persons. Article 1 of that Act stipulates as follows:

"The bodies of deceased persons may be dissected only in the following circumstances:

(i) Dissection for scientific and teaching purposes, subject to a testamentary bequest by the deceased person or the consent of one of his relatives to the fourth degree;

(ii) Dissection to ascertain the causes of death, on the basis of an order from the Department of Public Prosecutions;

(iii) Dissection for medical purposes to ascertain the cause of death, by order of the competent physician.

In such cases, the dissection must be carried out by a medical specialist at a hospital."

Article 2 of Act No. 4/82 further stipulates that organs of deceased persons which are suitable for transplantation may be used on the basis of a testamentary bequest by the deceased person or the consent of his relatives up to the fourth degree. Organs may be removed only by a medical specialist at a hospital. The Act prescribes a penalty of not less than one year's imprisonment and a fine of not less than 100 dinars for anyone who contravenes the above-mentioned legal provisions.

The Act also stipulates that, if the offender is a physician, in addition to the penalty of imprisonment and the fine, he should be banned from practising medicine for a period of not less than five years.

Article 6 of the Promotion of Freedom Act No. 20/91 promulgated on 1 September 1991 stipulates that: "Everyone has a right to physical integrity. It is prohibited to conduct scientific experiments on the body of a living person without his free consent."

Article 10 of the Medical Responsibility Act No. 17/86 stipulates that surgical operations must be performed with due regard for the following:

(a) The operation must be performed in a therapeutic institution or a medical clinic equipped for that purpose;

(b) The requisite tests and analyses must be made in order to ascertain that the patient is medically fit to undergo the operation;

(c) The patient's state of health must warrant the operation, except in cases involving the voluntary donation of body parts or organs;

(d) Written consent for the operation must be obtained from the patient or from the person legally responsible for him if he is not of full legal age or if his condition does not enable him to express his wishes, unless at least two physicians certify that the operation is essential and urgent and that it was impossible to obtain consent therefor.

It is noteworthy that the two above-mentioned Acts lay down legal rules and regulations that must not be contravened in regard to the performance of surgical operations, the dissection of corpses and the disposal of organs from deceased persons by, for example, transplanting them to living persons. The law in the Jamahiriya does not distinguish between one person and another, since the prohibition of the removal and transplantation of organs applies to children and adults alike.

Article 15 of Act No. 17/86 prohibits interference with a person's body and the removal of any organ or part thereof without written consent after ascertaining that no harm will be caused to the said person if he is living, or in accordance with the provisions of the above-mentioned Act No. 4/82 if he is deceased. The law also prohibits the conduct of scientific experiments on the body of a living person except with his consent, with a view to his deriving benefit therefrom, and on condition that such experiments are carried out by physicians licensed to do so in accordance with universally recognized scientific principles.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[1 February 1994]

Successive Governments have taken the view that organ donation should be a matter of choice on the part of the individual or his/her immediate family, and that it should be a positive, altruistic gift. No one should be forced, coerced or induced into parting with his/her organs for transplantation. Legislation secures this. The Human Organ Transplants Act, 1989, prohibits any sort of payment for organs and places considerable restrictions on transplants between living persons. The Human Tissue Act, 1961, permits the use of organs from deceased persons in specified circumstances and subject to the consent of the donor and/or his/her surviving relatives.

The organs of deceased children may be used for transplantation, subject of course to the provisions of the two Acts referred to above. The Code of Practice on Cadaveric Organs for Transplantation issued by the Health Departments states, "Approaches to the parents of a dead child need a particularly high standard of sensitivity and tact; while the law does not demand parental consent, it should always be obtained in the case of a child".

The position is rather different where removal of an organ from a living donor is under consideration. The ethics of the medical profession make it very unlikely that an organ would be removed from a living child for transplanting into another person if that child was unable to give valid consent. The Health Departments place great emphasis on the need for health professionals to obtain consent for all forms of treatment. A child under 16 may give such consent but the health professional concerned must be satisfied that the child fully understands what is being proposed.

The removal of an organ from a living child for transplantation to another person is an extremely serious proposal, and even if parental consent were given the clinician concerned might decide not to proceed with the operation. The final decision whether or not to give any form of medical treatment rests with the clinician. In deciding whether or not to perform a live transplant the clinician will take into account the risks to the proposed donor, and, if applicable, the fact that the proposed donor is a minor.

The Human Organs Transplants Act of 1989 places restrictions upon transplants between living persons who are not genetically related. All proposed transplants between living unrelated persons must be referred to the Unrelated Live Transplant Regulatory Authority (ULTRA) who will decide whether the proposed transplant can go ahead. All live donors are counselled at length about the seriousness of the step they propose to take. These provisions apply equally to children and adults.

The Human Organ Transplants Act and Regulations made under that Act require information about all organs donated and transplanted to be supplied to the United Kingdom Transplant Support Service Authority (UKTSSA). Full details of the donor and recipient, the medical practitioner, the place of operation and the organ(s) involved must be supplied, as well as the place of origin of the organ(s). This applies whether the organs were removed in the United Kingdom or abroad.

Seventy organs for transplant were received from abroad in both 1991 and 1992 - all of them from Europe. Of these, 26 were from children under age 18 in 1991; 14 were from children under age 18 in 1992. Most European and many other countries have legislation and controls similar to those in the United Kingdom to prevent trafficking in organs and control their supply and use.

II. United Nations and bodies

UNITED NATIONS OFFICE AT VIENNA

[Original: English]
[2 December 1993]

The Commission on Crime Prevention and Criminal Justice, at its second session, considered the issue of the impact of organized crime upon society at large, under item 3 of its agenda. In the report submitted by the Secretariat (E/CN.15/1993/3) it was stated that the "black market in transplant organs is one of specific fields of operation of organized crime. The large number of destitute and homeless persons, including children, found in urban areas, particularly in developing countries, provides a source of such transplant organs. This black market is bound to grow in importance as technological advances extend the preservation of organs after removal, so that transport can be provided over long distances."

Although the CPCJB is aware of this grave situation, it does not have, at present, a mandate to undertake investigations, research or other activities in this area. Other urgent priorities and the limited resources available have in fact curtailed any initiatives in this respect. Also, the issue of slavery has not yet been considered by the Commission and it is not on its agenda at present.

III. Intergovernmental organization

INTERNATIONAL CRIMINAL POLICE ORGANIZATION

[Original: English]
[5 January 1994]

Since 1987, the ICPO-Interpol has been following the issue of illegal organ transplants. A number of press reports attracted the attention of the General Secretariat and of the National Central Bureau in Brazil, and it was consequently decided that a survey would be made among member countries. The survey, however, brought no new information to light.

In 1991, the National Central Bureau in Brazil informed us it was investigating a case of illegal organ transplants in a hospital in Sao Paolo, in cooperation with the police in Uruguay. The investigations however, did not result in the conviction of a suspect.

The illegal transport of organs was also discussed during the 62nd General Assembly Session in 1993 at the request of the Brazilian delegation for whom it was extremely important to make clear that accusations made by Professor Schwartzenberg at the European Parliament were entirely unfounded. Professor Schwartzenberg had claimed that 3,000 children adopted in Brazil had in fact been sold to the Napolitan Camorra for transplant purposes. The ICPO-Interpol will continue to monitor this issue closely.